In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1584

GREYHOUND LINES, INC.,

Petitioner,

vs.

AMALGAMATED TRANSIT UNION, DIVISION 1384, AFL-CIO
and
THE AMALGAMATED COUNCIL OF GREYHOUND DIVISIONS, AFL-CIO,

Respondents.

Supplemental Brief of Petitioner

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Pursuant to Rule 24(5) of this Court, Petitioner respectfully calls the Court's attention to its recent decision in *Buffalo Forge Co. v. United Steelworkers of America, AFL-CIO, et al.*, ...U.S..... (No. 75-339, July 6, 1976), unofficially reported at 1976 CCH Sup. Ct. Rep. p. B4953. The *Buffalo Forge* decision was not available at the time of filing Petitioner's last brief.

Buffalo Forge concerned an employer's suit to enjoin a union from engaging in a sympathy strike pending an arbitrator's ruling as to whether that sympathy strike violated the no strike clause in the parties' collective bargaining agreement. This case concerns a union's suit to enjoin an employer from taking action pending an arbitrator's ruling as to whether that employer action violated a clause in the parties' collective bargaining agreement. Therefore this case is simply the other side of the coin from *Buffalo Forge*.

Buffalo Forge held that a district court could not issue an injunction restraining the sympathy strike pending arbitration. It based that holding on these principles:

> "This is not what the parties have bargained for. Surely it cannot be concluded here, as it was in *Boys Markets*, that such injunctions pending arbitration are essential to carry out promises to arbitrate and to implement the private arrangements for the administration of the contract. As is typical, the agreement in this case outlines the prearbitration settlement procedures and provides that if the grievance 'has not been . . . satisfactorily adjusted,' arbitration may be had. Nowhere does it provide for coercive action of any kind, let alone judicial injunctions, short of the terminal decision of the arbitrator. The parties have agreed to grieve and arbitrate, not to litigate. They have not contracted for a judicial preview of the facts and the law. Had they anticipated additional regulation of their relationships pending arbitration, it seems very doubtful that they would have resorted to litigation rather than to private arrangements. The unmistakable policy of Congress stated in 29 U.S.C. § 173(d), 61 Stat. 153, is that 'Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement.' *Gateway Coal Co. v. United Mine Workers, supra,* at 377. But the parties' agreement to adjust or to arbitrate their differences themselves would be eviscerated if the courts for all practical purposes were to try and decide contractual disputes at the preliminary injunction stage." ....U.S..... at ....., 1976 CCH Sup. Ct. Rep. at pp. B4965-66 (footnote omitted).

Those principles apply with equal force to this case. The only "difference" is that here the parties are reversed and the union is plaintiff. That "difference" makes no difference, because the principles are the same and they do not change with who the plaintiff happens to be.

The Ninth Circuit decision in this case is contrary to those principles, and it establishes the opposite principles for cases where the union is plaintiff. This Court should grant the petition for certiorari, reverse the Ninth Circuit decision, and hold that the same principles that apply where the employer is plaintiff apply as well where the union is plaintiff.

Dated: July 27, 1976.

Respectfully submitted,

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